tion of two or more of these defendants to improperly release Samuel Snow from his imprisonment, thus obstructing the process of the United States. If you are satisfied there was, you will find so many as entered into such a conspiracy and combination guilty under the first count of the indictment.

This case will point out the caution with which those in authority should proceed. The steps taken could not possibly redound to the benefit of Samuel Snow, for the discharge obtained could not protect him against an examination into his offence before the grand jury. Instead of having him to deal with, if no interference had occurred, we are now engaged in examining into the case growing out of the interference. It seems incomprehensible why a jealousy should exist between the state and the National Government, and especially between the judiciaries of the two. Identity of interests, affecting the individual in both capacities as a citizen of a state and the General Government alike, when rightly understood, can leave no room for differences.

The judiciary, solely interested in the faithful execution of the laws, should hesitate to interfere with each other, because of the conflict which must necessarily follow derogatory to both.

You, gentlemen of the jury, to whom this case is about to be submitted for final action, will enter upon the consideration thereof, I am sure, in that true spirit which recognises its obligations to both governments, and above all, to that spirit of justice and of right on which all government and laws securely rest.

The jury returned a verdict, finding McAfee (the judge who issued the writ) and Doss (the attorney of the prisoner suing out the writ) guilty, and Snow and Wray not guilty.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF GEORGIA.[1]

SUPREME COURT OF KANSAS.[2]

SUPREME JUDICIAL COURT OF NEW HAMPSHIRE.[3]

SUPREME COURT OF NEW YORK.[4]

ADMINISTRATORS AND EXECUTORS.

Payment of Debts out of Lands—Statute of Limitations.—The

[1] From J. H. Thomas, Esq., to appear in 42 or 43 Georgia Reports.

[2] From W. C. Webb, Esq., Reporter; to appear in 7 or 8 Kansas Reports.

[3] From the Judges; to appear in 49 or 50 New Hampshire Reports.

[4] From Hon. O. L. Barbour, Reporter; to appear in Vol. 61 of his Reports.

question whether there are any debts or legacies for the payment of which the lands of an estate in the course of administration are properly liable, is one clearly within the jurisdiction of the Court of Probate, and the decision of that court upon that question will be final and conclusive, if no appeal be taken: *Hall* v. *Woodman*, 49 or 50 N. H.

All claims against a solvent estate are barred by the statute in three years after the granting of administration, specified cases excepted, unless suit thereon was commenced within the three years, and was not adjusted at the close of said term: *Id.*

The administrator cannot by any promise in writing or otherwise, take any claim out from the operation of this statute, nor is he at liberty to omit to plead that statute of limitation in any case where it is applicable: *Id.*

The judge of Probate should not, therefore, grant to an administrator license to sell lands of the estate, if solvent, after the expiration of three years from the granting of administration, except in the cases specified in the statute, unless there are suits against the estate pending and unadjusted at the expiration of the three years, nor in cases of insolvency, except in cases of appeal from the commissioner, or in cases of review pending and unadjusted at the close of said term, or for other similar reasons: *Id.*

And when such special reason exists for extending the time, the administrator should be required to make his application for license within reasonable time after the cause for delay has been adjusted or ceases to exist, else his application should be refused: *Id.*

An administrator, whether the estate is solvent or insolvent, is bound to execute his trust in a reasonable time. And if he unreasonably delay and neglect to apply land of the estate for the payment of debts, his right to sell the land, his lien upon it for the payment of debts, will be forfeited and lost, and the heirs or devisees may enter and hold the land against him: *Id.*

ASSUMPSIT.

Services where no Compensation is fixed—Evidence of Value of Services.—The refusal to permit a question asked on cross-examination to be answered, is not cause for reversal, even though the question was one which was properly asked in the latitude allowed on cross-examination, where it clearly appears that such ruling could not have prejudicially affected the losing party: *Missouri River Railroad Co.* v. *Richards*, 7 Kans.

A person who has personal knowledge of the services rendered, and has a knowledge of the value of the services, and what was usually paid for such services in the East, is competent to testify what the services were worth; although he may not have known of any established price for such services in the vicinity where rendered: *Id.*

When the by-laws of a corporation provide that the officers shall receive such compensation for their services as the board of directors shall fix and allow, and the board has not fixed any compensation, a secretary who has rendered services is entitled to recover therefor, unless there was an understanding that he was to render the services without compensation: *Id.*

The jury has a right in making up their verdict to use their general knowledge, such as any man may bring to the subject: *Id.*

Bankruptcy.

Jurisdiction of State Courts after Filing of Petition—Homestead.—When the United States courts under the Bankrupt Act have acquired jurisdiction of the estate of the bankrupt, the state courts lose jurisdiction of all claims against him provable under the Bankrupt Act, except specific liens upon his property, and legal or equitable claims of title thereto, and the homestead and exemption provisions of the Constitution of 1868 do not create such a specific lien upon or title to his estate in favor of his family, as may be heard and adjudicated by the state courts pending the proceedings in bankruptcy: *Woolfolk* v. *Woolfolk*, 42 or 43 Ga.

Whether said claim is such a debt in favor of the family as may be proven before the Bankrupt Court, independently of the exemption granted by the bankrupt law to the bankrupt, is for that court alone to decide: *Id.*

Bills and Notes.

Endorsement after maturity.—If a promissory note, payable to the order of a person in whose hands it is invalid, is taken from him before maturity, but not endorsed by him till overdue, or till after notice of a defence, the endorsement does not relate back to the time of the taking, and the endorsee has no better title than the endorser himself had, although it was taken in good faith and for value: *Clark* v. *Whitaker*, 49 or 50 N. H.

Usury.—When the payee of a note endorses it after maturity, and suit is brought by the endorsee against the maker and endorser, and the plea by the maker sets up usury, such plea by the maker does not affect the liability of the endorser upon his contract of endorsement after the maturity of the paper. The contract of endorsement was a new and distinct contract not affected by usury between the payee and maker in the hands of the endorsee without notice, and the endorser in a suit against him by the endorsee cannot set up his own illegal act in taking usury to defeat a recovery against himself as endorser: *Frank* v. *Longstreet, Sedgwick & Co.*, 42 or 43 Ga.

Contract.

Construction—Illegality never presumed.—When it is averred in a petition that language in a contract which is susceptible of two meanings was intended by the parties to have one of such meanings, upon issue joined by demurrer, the contract will be construed as having that meaning: *Craft* v. *Bent et al.*, 8 Kans.

Under a contract to pay for land upon the execution of a deed, interest does not begin to run until tender of the deed: *Id.*

A decree requiring the performance of a contract by one party should also receive if possible performance by the other: *Id.*

Courts will never presume a contract to be illegal. Its illegality must be shown: *Id.*

Criminal Law.

Magistrate or Police Court cannot commit except for the very Offence charged.—Although it is competent, upon an indictment, when the respondent is not guilty of the offence as charged, for the jury to find him guilty of some minor offence which is necessarily included in the

offence as charged, yet this power is not conferred upon magistrates or police courts: *State* v. *Runnals*, 49 or 50 N. H.

The charge as made in the complaint and warrant determines whether the magistrate can try and determine the case, or whether he can only hear the evidence and determine whether he will bind over or discharge the respondent: *Id.*

If the offence *charged* in the complaint and warrant is one that may be punishable by a fine of more than twenty dollars, or imprisonment in jail for more than six months, the magistrate has no power to *determine* it, but must either *bind over* or *discharge*: *Id.*

In such cases he should not *acquit*; for, when he cannot convict and pass sentence, he has no power to acquit: *Id.*

The charge for assault and battery is made a special exception by statute, and in that class of cases the magistrate may acquit, or may convict and pass sentence within certain limits, or he may bind over, if, in his judgment, the punishment should exceed his jurisdiction to inflict: *Id.*

In all criminal cases where the magistrate or police court have jurisdiction, the Supreme Court has also original concurrent jurisdiction: *Id.*

Police Court—Jurisdiction.—Where a complaint before a police court for larceny described an offence the *maximum* punishment of which was greater than a police court had power to impose, it was held, that such court had no jurisdiction to try such offence, and that an appeal from its sentence, although it was to pay a fine within the power of that court to impose, must be dismissed: *State* v. *Dolby*, 49 or 50 N. H.

Held, also, that the value of the goods as stated in the complaint must govern the question of jurisdiction, and not the value as found on trial, and that this defect could not be cured by amendment in the appellate court: *Id.*

Larceny.—Upon a trial for larceny of a horse, a bill of sale to the horse offered by the prisoner without showing *aliunde* its *bonâ fide* execution, is inadmissible as evidence: *Taylor* v. *The State*, 42 or 43 Ga.

Debtor and Creditor.

Assignments for Benefit of Creditors—Infancy of Assignor.—Where, at the time an assignment of property in trust for the benefit of creditors was executed, one of the assignors was an infant, of the age of nineteen years, only: *Held*, That that fact, alone, rendered the assignment void, as matter of law, as against creditors; upon the ground that an infant having a right to disaffirm his contracts, an assignment by him does not, and cannot, as matter of law, devote the property assigned, absolutely and unconditionally, to the payment of his debts: *Yates et al.* v. *Lyon*, 61 Barb.

The general principle, that a sale or assignment by an infant is voidable only, and not void, until he elects to avoid it, and remains valid until such election, does not apply to such a case: *Id.*

Nor is it of the least consequence that the infant assignor did not elect to disaffirm or revoke, but by his silence, afterwards, consented to, and ratified the assignment. The vice lies in the power he had to disaffirm or avoid: *Id.*

DEED.

Want of Consideration—Subsequent Grantee.—A subsequent grantee cannot ordinarily attack a prior deed of his grantor for fraud or want of consideration: *Gray* v. *Ulrich et al.*, 7 Kans.

But where he has the equitable title at the time of the execution of the prior deed, then he may question the interest conveyed by such deed: *Id.*

DESERTER.

Disfranchisement of.—The United States Act of March 3d 1865 does not contemplate the disfranchisement of deserters except after conviction by court-martial: *Severance* v. *Nealey*, 49 or 50 N. H.

DOWER.

A widow, in this state, is entitled to dower in lands bargained by the husband in his lifetime to a third person, the purchase-money remaining unpaid, and the title to the land being retained by the husband in himself until his death: *Slaughter* v. *Culpepper et al.*, 42 or 43 Ga.

ESTATE FOR YEARS.

An estate for years may be bought and sold as other real estate, even against the consent of the grantor, if there be nothing in the deed to prevent it: *Clark* v. *Herring & Mock*, 42 or 43 Ga.

EVIDENCE. See *Assumpsit; Criminal Law.*

The admission of parol evidence to contradict a note and prove *conditions* not expressed therein is error; while the *failure* of *consideration*, in whole, or in part, may be given in evidence, *new conditions* cannot: *Lester & Lester* v. *Fowler et al.*, *Scaife* v. *Beall*, 42 or 43 Ga.

FORMER SUIT.

Judgment in, when not a Bar to a subsequent Action.—Creditors who had seized, upon attachment, the property of their debtors in the hands of an assignee for the benefit of creditors, being sued by the assignee, for the conversion of the property, set up as a defence, that the assignment was invalid, for fraud. The defence was ruled out, because the attachment had been set aside for irregularity, and the creditors were thus left without justification, and were mere tort-feasors. The question as to the validity of the assignment was not litigated and determined, as it was held not to arise. *Held*, That the judgment in that action was no bar to a subsequent action, by the creditors against the assignors and assignee, to set aside the assignment: *Yates et al.* v. *Lyon*, 61 Barb.

HIGHWAY.

Dedication—Use—Abandonment.—The laying out of a highway by the selectmen of a town without an application for it, is invalid. The provision of the Revised Statutes, ch. 53, s. 7, that no highway not laid out agreeably to statute law shall be deemed a public highway, unless the same has been used by the public for twenty years, operates to discontinue all highways not so used, and depending upon dedication, even when used long enough to become public highways under the former laws: *State* v. *Morse*, 49 or 50 N. H.

The jury cannot rightfully presume that a highway has been laid out

agreeably to statute law, from the mere use of it by the public for any period less than twenty years: *Id.*

Proof, that part of an entire highway, the laying out of which was defective, has been used by the public for the term of twenty years, is evidence of a legal highway, as to the part so used, although no distinct act of acceptance by the town be shown: *Id.*

Where the record of a laying out of a highway is defective in failing to show a particular statute requisite, but enough is shown to render it probable that all the requisites had been complied with, and at the same time the record is so ancient as to afford a presumption, that by the death of the actors it could not be amended, there a jury on such evidence, aided by the fact that the highway had been opened by the town and used for many years, though less than twenty, would be justified in finding the highway to have been legally laid out: *Id.*

So long as a highway once established is kept open and fenced out, and the public never excluded, but it has always been used as a public highway by the landowners for access to their farms, and for other farming purposes, the right of the public will not be deemed to be lost by abandonment: *Id.*

Where a road is established by use alone, it is not necessarily limited to the travelled track, and the ditches on each side, but a jury would be at liberty to find that the easement extended over the whole space marked by fences which had been maintained more than twenty years, and which gave about the usual width of a highway: *Id.*

HOMESTEAD. See *Bankruptcy.*

A widow is not entitled to a homestead and personal exemption out of the property of the intestate in addition to her dower and provision for her year's support: *Rust, Johnson & Co. et al.* v. *Billingslea et al.*, 42 or 43 Ga.

The crop made upon a rented place is subject to the lien of the landlord for his rent, and if the same has been set apart as an exemption for the benefit of the family of the tenant, is nevertheless subject to levy and sale for the payment of the rent, the claim for rent being in the nature of the purchase-money: *Harral* v. *Feagin*, 42 or 43 Ga.

INFANT. See *Debtor and Creditor.*

INTEREST.

In the Absence of any Agreement to pay, not collectable after Payment of Debt.—When there is no agreement to pay interest, interest when allowable, is allowed, not as part of the contract, but as an incident, and by way of damages for the default, to make the creditor good for the loss he has sustained by reason of the breach or default: *The Southern Central Railroad Company* v. *The Town of Moravia*, 61 Barb.

In that class of cases, it has always been held, that after the principal of the debt had been paid, and received in full, no action could be maintained to recover interest: *Id.*

The defendant subscribed to the capital stock of a railroad company, the amount of the subscription to be paid "in such instalments, and at such times, as the board of directors might lawfully direct." Several calls were made, by the directors, amounting in the aggregate to the precise sum subscribed, which were all paid by the defendant, but not

at the times designated in the calls, and receipts given. Nothing was said about interest, and no claim made for it, until after the whole principal had been paid: *Held*, That an action would not lie to recover interest on the several amounts specified in the calls, for the time they remained unpaid after the day designated for payment, by the call: *Id.*

LANDLORD AND TENANT. See *Homestead.*

A tenant for a year under a contract of rent stands in the shoes of his landlord, and in general is not a purchaser entitled to notice of equities against his landlord in favor of third persons: *Clark* v. *Herring & Mock*, 42 or 43 Ga.

A tenant cannot attorn to one who claims adversely to his landlord, even to prevent an illegal eviction by the sheriff: *Donkle* v. *Kohn*, 42 or 43 Ga.

When a party sublets to another under a contract that the sublessee is to pay the rent due, this is not such a claim for rent by the landlord as may be enforced against the sublessee by levy of a distraint warrant: *Smith* v. *Turnley et al.*, 42 or 43 Ga.

LIMITATIONS, STATUTE OF. See *Administrators.*

Effect of a Partial Payment.—A partial payment made upon a promissory note, by the administratrix of one of the makers, a portion of which payment is from assets of the estate, if made before the Statute of Limitations has run against the note, saves the obligation from the operation of the statute, up to that time. And this, although the payment was made without the consent of the other administrator: *Heath et al., Adm'rs.*, v. *Grenell, Adm'r.*, 61 Barb.

An administratrix making a payment upon a note after the Statute of Limitations has run against it, not out of the assets of the estate, but out of her own funds, will not be deemed as acting in her capacity of administratrix, even though she directs the payment to be made upon that specific debt. Nor can such a payment be construed into a promise, or as indicating an intention to revive or continue the demand against the estate: *Id.*

Any payment upon such a note, made by the administratrix with her own money, cannot bind the estate, or affect it in any way, any more than if it had been the act of a stranger: *Id.*

Where an administratrix directed her agent to pay a certain sum on her intestate's debts, out of money of her own, giving no specific direction to pay a particular demand, or any part of it, and the agent, in the exercise of his own discretion, in distributing the fund, made a partial payment upon that demand: *Held*, That the general direction to the agent could not be construed into a promise or intention to continue that particular demand, and not being made from the assets of the estate, the payment could have no bearing against the estate: *Id.*

MORTGAGES.

Individual property is not embraced by a mortgage executed by partners on their partnership property except it is specifically set forth and described: *Reid* v. *Goodwin*, 42 or 43 Ga.

New Trial.

How far granted—Amendment after Verdict.—The rule now adopted by this court is, that when a general verdict depends upon the finding of several disputed facts or questions, some of which were not and could not have been affected by any error in the ruling of the court, and others of which were or may have been thus injuriously affected, the verdict will not be wholly set aside, and the case thrown open again to a new trial on all points; but such findings of facts as have been had upon the merits, and to which no valid objection can be made, shall remain undisturbed, and the verdict shall be set aside, and a new trial granted only on those points necessary to correct some error or mistake: *Janvrin* v. *Fogg*, 49 or 50 N. H.

And when the court can see that the only question of fact in the case has been submitted to and settled by the jury, under some mistaken ruling of law, in precisely the same manner and upon the same evidence, that it must have been submitted and settled, had the rulings upon the law been correct, the verdict will not be set aside: *Id.*

Amendments to be passed upon by the court, and which could not affect the finding of the jury, may be made *after* verdict, and judgment then rendered upon the verdict: *Id.*

And if amendments may be made in the cause itself after verdict, they may also be made in the testimony relating to the competency of records or other papers used as evidence in the cause, when they are not of a character to affect the finding of the jury, and are addressed to the court alone: *Id.*

Where a mortgage of personal property was introduced in evidence, which proved not to be sufficiently stamped so as to make it competent, *Held*, that this evidence of competency, being addressed only to the court, and being such that it could not have been affected, the verdict of the jury may be supplied by properly stamping the mortgage after verdict. And where that was the only ground of objection to the evidence, judgment will then be rendered upon the verdict: *Id.*

Nuisance.

Private Action for—Highway—Mill-dam.—An individual sustaining an injury from a public nuisance, differing in kind from that sustained by the community in general, may maintain an action therefor: *Venard* v. *Cross*, 7 Kansas.

Proof of service of the notices provided by section 4 of the Road Act of 1864 was not required to be filed, recorded, or preserved, and a failure of the record to show such proof of service does not avoid the record: *Id.*

The right of flowing lands obtained by proceedings under the Mill-Dam Act does not include the right to overflow or obstruct a highway: *Id.*

Chapter 66 of the General Statutes, commonly known as the "Mill-Dam Act," is constitutional and valid: *Id.*

Pardon.

Under the Constitution of Georgia the Governor may exercise the pardoning power *before* conviction as well as *after* conviction. Warner J., dissenting: *Dominick* v. *Bowdoin*, 42 or 43 Ga.

Where one was in custody under a bench-warrant founded upon an indictment by the grand jury, and sued out a writ of *habeas corpus* before a judge of the Superior Court, and as a ground of discharge, offered a pardon from the Governor for the offence charged against him, and the judge refused to receive and consider the pardon: *Held*, That this was manifest error by the court. It is the duty of all courts sitting for the purpose of *habeas corpus* or otherwise to receive, without further evidence of its verity, the pardon of the governor under the great seal of the state: *Id.*

Pardons obtained by fraud are void, and upon suggestion of fraud upon the trial of *habeas corpus* it was the duty of the judge presiding to have heard the evidence and passed upon its merits, as to the facts in the particular case, and it was error in the court to hold that this question could only be inquired of by the jury: *Id.*

Pardons *before conviction* are based upon the confession of the imputed guilt of the accused, and before such pardon takes effect it must be accepted by the accused, and when the plea of pardon by sureties fails to set up its acceptance by their principal, evidenced by his application for the pardon, and delivery to him, or his acceptance of it when done, the pardon granted without the application of the principal, and not evinced by his acceptance of it, is of no effect: *Bullock, Governor*, v. *Hancock et al.*, 42 or 43 Ga.

Partnership.

Whatever may be the interest of the parties, and whether they be, in fact, partners under the bargain or not, they will be liable as such, if they so act as to hold themselves out to the world as such: *Sankey & Shorter* v. *Hall, Moses & Co.*, 42 or 43 Ga.

The sayings of one of the partners, not expressly, or by implication, brought to the knowledge of the other, are no evidence against that other in an issue of partnership or no partnership: *Id.*

Payment.

When may be recovered back.—When a party pays an illegal demand with a full knowledge of all the facts which render such demand illegal, without an immediate and urgent necessity therefor, or unless to release his person or property from detention, or to prevent an immediate seizure of the same, such payment must be deemed to be voluntary, and cannot be recovered back; and the fact that the party at the time of making the payment files a written protest, does not make the payment involuntary: *Commissioners* v. *Walker*, 8 Kans.

Review.

Amendment.—When there is a written contract between the parties, it is for the court to give construction to that contract, if it becomes necessary, but it is for the jury to find whether the acts done which constitute the basis of the present action, were done under that contract or some other which was not written: *Colebrook* v. *Merrill*, 49 or 50 N. H.

In actions of review the statute has placed the whole subject of amending the pleadings and of admitting new pleadings, entirely within the discretion of the court: *Id.*

In the trial of an action upon review the court may, in its discretion, reject or disallow a demurrer to the original declaration: *Id.*

What is Pleadable in Action of.—Upon review, no matter or thing which has arisen since the judgment in the original cause, can be pleaded in bar of the further maintenance of the suit: *Zollar* v. *Janvrin*, 49 or 50 N. H.

A review is a new trial of the issues before tried between the parties, unless the court grant leave to amend the pleadings: *Id.*

An action of review is a *chose in action*, which, in virtue of an adjudication of bankruptcy, vests in the assignee; who is, alone, empowered to prosecute or defend it, in his own name: *Id.*

Slander.

Words spoken in heat—Mitigation of Damages.—Where slanderous words, which are *per se* actionable, are spoken in a moment of heat and passion, induced by some improper conduct immediately preceding on the part of the plaintiff, the said circumstances under which the words were spoken are not a complete defence to the action for slander, but should be considered by the jury only in mitigation of damages: *Miles* v. *Harrington*, 8 Kans.

In an action of slander for words spoken which are *per se* actionable, where the petition does not allege any special damages, the jury may give a verdict for such general damages as the plaintiff may have sustained; and all damages, which are the necessary and natural result of the words spoken, are general damages: *Id.*

And in such an action damage is presumed without any proof of actual damage, and if no special damage is pleaded, no general damage proved, nor exemplary damage allowed by the jury, still the jury should allow nominal damages for the plaintiff: *Id.*

And in such a case, whether exemplary damages should be allowed, is a question for the jury, under all the circumstances: the law would permit such damages: *Id.*

Opinion of Witness as to meaning of Words used.—Where, in an action for slander, the plaintiff proved the speaking by defendant of other defamatory words for the purpose of showing malice, the defendant will not be allowed to ask the witness how he understood those words: *Shaw and Wife* v. *Shaw*, 49 or 50 N. H.

Such inquiry will be allowed in reference to the words charged in the declaration only, when they are ambiguous, and with caution: *Id.*

Stamps. See *New Trial.*

Taxes.

An action was brought by the plaintiff against the defendant on a promissory note. The defendant moved to dismiss the plaintiff's suit, on the ground that he had not filed an affidavit that the taxes had been paid on the debt, as required by the Act of 1870. The plaintiff was a *non-resident* of this state: *Held*, That inasmuch as the plaintiff was a non-resident of the state there was no tax, due by him on the debt, which he was bound to pay: *McDonald & Co.* v. *Feagan, Sheriff*, 42 or 43 Ga.

Usury. See *Bills and Notes.*